

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

JAMEKA K. EVANS

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Plaintiff,

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v.

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Civil Action No:

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4:15-CV-00103-JRH-GRS

GEORGIA DEPARTMENT OF
BEHAVIORAL HEALTH AND
DEVELOPMENTAL
DISABILITIES, and LISA CLARK,
In her official capacity, and
CHARLES MOSS in his individual
Capacity,

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Defendants.

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**DEFENDANTS’ MOTION TO STAY DISCOVERY AND ALL PRE-TRIAL
DEADLINES PENDING RESOLUTION OF THEIR MOTION TO DISMISS
THE SECOND AMENDED COMPLAINT IN LIEU OF ANSWER**

COME NOW, Georgia Department of Behavioral Health and
Developmental Disabilities (“GDBHDD”), Lisa Clark, and Charles Moss,
Defendants in the above-styled action, by and through counsel, the Attorney
General of the State of Georgia, and submit this Motion to Stay Discovery and All
Pre-Trial Deadlines Pending Resolution of their Motion to Dismiss the Second
Amended Complaint in Lieu of Answer. [Dkt. No. 53]. Defendants respectfully
request that the discovery period and all pre-trial deadlines required by Federal
Rules of Civil Procedure 16 and 26 and Local Rule 26 of the United States District

Court for the Southern District of Georgia be stayed until the Court has ruled upon the motion to dismiss. Defendants' brief in support of this motion is attached hereto along with a proposed order.

Respectfully submitted, this 2nd day of July, 2018.

CHRISTOPHER M. CARR 112505
Attorney General

ANNETTE M. COWART 191199
Deputy Attorney General

BRYAN K. WEBB 743580
Senior Assistant Attorney General

s/ Katherine P. Stoff
KATHERINE P. STOFF 536807
Senior Assistant Attorney General

s/ Courtney C. Poole
COURTNEY C. POOLE 560587
Assistant Attorney General

Please serve:

KATHERINE P. STOFF
Senior Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 656-3393
Facsimile: (404) 657-9932
Email: kstoff@law.ga.gov

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2018, I electronically filed the foregoing **DEFENDANTS' MOTION TO STAY DISCOVERY AND ALL PRE-TRIAL DEADLINES PENDING RESOLUTION OF THEIR MOTION TO DISMISS THE SECOND AMENDED COMPLAINT IN LIEU OF ANSWER** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Gregory R. Nevins
Lambda Legal Defense & Education Fund, Inc.
730 Peachtree Street, N.E.
Suite 1070
Atlanta, Georgia 30308
GNevins@lambdalegal.org

Natalie Nardecchia
Lambda Legal Defense and Education Fund, Inc.
4221 Wilshire Boulevard
Suite 280
Los Angeles, CA 90010
nnardecchia@lambdalegal.org

Gerald Weber
Law Offices of Gerry Weber, LLC
P.O. Box 5391
Atlanta, Georgia 31107
wgerryweber@gmail.com

s/ Katherine P. Stoff
Attorney for Defendants

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Defendants.

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**DEFENDANTS’ BRIEF IN SUPPORT OF THEIR MOTION TO STAY
DISCOVERY AND ALL PRE-TRIAL DEADLINES PENDING
RESOLUTION OF THEIR MOTION TO DISMISS THE
SECOND AMENDED COMPLAINT IN LIEU OF ANSWER**

COME NOW, Georgia Department of Behavioral Health and
Developmental Disabilities (“GDBHDD”), Lisa Clark, and Charles Moss,
Defendants in the above-styled action, by and through counsel, the Attorney
General of the State of Georgia, and submit this brief in support of their Motion to
Stay Discovery and All Pre-Trial Deadlines Pending Resolution of their Motion to
Dismiss the Second Amended Complaint In Lieu of Answer. Defendants show the
Court the following:

Defendants have filed a motion to dismiss in lieu of answer pursuant to Federal Rules of Civil Procedure (“FRCP”) 12 (b) (1) and (6). [Dkt. No. 53]. Defendants therefore request that the Court stay the discovery period and all pre-trial deadlines required by FRCP Rules 16 and 26 and Local Rule 26 of the United States District Court for the Southern District of Georgia pending resolution of their motion.

On March 2, 2018, Defendants moved to dismiss Plaintiff’s Second Amended Complaint in its entirety on the following grounds: (A) the court lacks personal jurisdiction over Plaintiff’s Title VII claim against GDBHDD because Plaintiff had not served GDBHDD with process; (B) Plaintiff’s 42 U.S.C. § 1983 (“Section 1983”) claim is time-barred under the two-year statute of limitations; (C) Plaintiff’s Section 1983 claim is further barred by the Court of Appeals’ mandate, limiting her right to amend the existing Title VII claim; (D) Plaintiff fails to state a claim for relief of unlawful sex discrimination; and (E) Defendants are entitled to qualified immunity from her Section 1983 claim. [Dkt. No. 53-1]. In their Reply, Defendants withdrew their arguments for dismissal based upon lack of service of process and personal jurisdiction under FRCP Rule 12 (b) (2), (4) and (5) and their argument for dismissal on the basis of qualified immunity, reserving the right to re-assert the latter argument after discovery. [Dkt. No. 63]. Defendants reasserted

their arguments for a full dismissal of Plaintiff's Second Amended Complaint under FRCP Rule 12 (b) (1) and (6). *Id.*

The Court has broad discretion to stay discovery pending a ruling on a dispositive motion which could resolve important issues in the case. *See Prince v. Knight*, 2018 U.S. Dist. LEXIS 79989 *3 (S.D. Ga. May 11, 2018). In deciding whether to stay discovery, the Court should balance the possible harm from a discovery delay with the burden of costly discovery on the parties. *Id.* at *4. But, when a challenge is raised to the "legal sufficiency of a claim" such as "failure to state a claim for relief," the issue should be resolved before discovery begins. *See Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 2005).

Requiring Defendants to comply with discovery requests and preliminary deadlines while the potentially dispositive motion is pending would result in undue burden and expense as well as judicial inefficiency, considering that the motion may result in a full dismissal of Plaintiff's Second Amended Complaint or the dismissal of the individual Defendants. Therefore, Defendants respectfully request that the Court stay the discovery period and all pre-trial deadlines required by FRCP 16 and 26 and Local Rule 26 pending resolution of the motion to dismiss. A proposed order accompanies the motion and this brief.

Respectfully submitted, this 2nd day of July, 2018.

CHRISTOPHER M. CARR 112505
Attorney General

ANNETTE M. COWART 191199
Deputy Attorney General

BRYAN K. WEBB 743580
Senior Assistant Attorney General

s/ Katherine P. Stoff
KATHERINE P. STOFF 536807
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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2018, I electronically filed the foregoing **DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO STAY DISCOVERY AND ALL PRE-TRIAL DEADLINES PENDING RESOLUTION OF THEIR MOTION TO DISMISS THE SECOND AMENDED COMPLAINT IN LIEU OF ANSWER** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

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Lambda Legal Defense & Education Fund, Inc.
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Suite 1070
Atlanta, Georgia 30308
GNevins@lambdalegal.org

Natalie Nardecchia
Lambda Legal Defense and Education Fund, Inc.
4221 Wilshire Boulevard
Suite 280
Los Angeles, CA 90010
nnardecchia@lambdalegal.org

Gerald Weber
Law Offices of Gerry Weber, LLC
P.O. Box 5391
Atlanta, Georgia 31107
wgerryweber@gmail.com

s/ Katherine P. Stoff
KATHERINE P. STOFF 536807
Attorney for Defendants

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ORDER

This matter is before the Court pursuant to Defendants’ Motion to Stay Discovery and All Pre-Trial Deadlines Pending Resolution of their Motion to Dismiss the Second Amended Complaint in Lieu of Answer (“Motion to Stay”). For good cause shown and in light of this Court’s finding that a stay of pre-trial deadlines and discovery proceedings will not prejudice Plaintiff, the Court GRANTS Defendants’ Motion to Stay.

It is hereby ORDERED that the discovery period and the pre-trial deadlines, including the Rule 26(f) conference, shall be stayed pending the Court's ruling on Defendants' Motion to Dismiss the Second Amended Complaint in Lieu of Answer.

SO ORDERED, this _____ day of _____, 2018.

G.R. SMITH
MAGISTRATE JUDGE

Please serve:

KATHERINE P. STOFF
Senior Assistant Attorney General
Georgia Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 656-3393
Facsimile: (404) 657-9932
Email: kstoff@law.ga.gov